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SENSITIVE

DEPT FOR EB/IPC SWILSON  
DEPT PLS PASS TO USTR JCHOE-GROVES, DOC JBOGER,  
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SUBJECT: SPECIAL 301 REVIEW -- EMBASSY RECOMMENDS WATCH  
LIST FOR THAILAND

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¶1. (U) Sensitive but Unclassified. Please handle accordingly.

¶2. (SBU) Overall IPR protection in Thailand remains woefully inadequate by any measure. During the past year, however, the RTG has modestly improved upon its commitments to improve IPR protection. Minister of Commerce Wattana Muangsuk initiated an extended anti-piracy campaign in June, and, in November and December 2004, the Royal Thai Police conducted dozens of factory and warehouse raids, seizing millions of pirate CDs and decommissioning several replication machines used for copyright infringement. The most significant item of IPR legislation (the Optical Disk Manufacturing Law) was passed by the Parliament in October 2004. Because of these successes, local industry representatives agree that the overall IPR enforcement environment has improved slightly since the beginning of the year, but much work remains to be done. The RTG has put other legislative items, such as Amendments to the Copyright Act and the implementing regulations for the Trade Secrets Act, on hold pending the outcome of U.S.-Thai Free Trade Agreement (FTA) negotiations. Enforcement campaigns are still often linked to timely political events (such as the start of FTA talks) rather than focused on gradual, sustained reductions. The proliferation of cable piracy continues to be a major concern for US rights holders. Nevertheless, most local rights holders recognize that the IPR situation (which is, by all accounts, deplorable) is no worse than it was last year, and slightly improved in some areas. Furthermore, urgent tsunami recovery efforts have diverted some of the RTG's IPR

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protection resources. For these reasons, the Embassy recommends that Thailand remain on the Watch List.

RTG Enforcement Campaign Shows Some Results

¶3. (SBU) Under the leadership of Minister of Commerce Wattana Muangsuk, the RTG initiated a major IPR enforcement campaign in June 2004. This campaign was sparked by the signing of yet another Memorandum of Understanding (MOU) between Thai agencies involved in enforcement efforts, and rights holders and their representatives. (Note: This MOU, forged between rights holders and RTG enforcement agencies, is similar to previous agreements, but details specific obligations to rights holders, who pledge to cooperate with enforcement agencies and not to use out of court settlements, and to the police, who are charged with keeping 36 specified areas free of pirated goods. The 36 areas are divided into &red8 and &yellow8 zones, depending on the severity of pirate and counterfeit retail operations.) The timing of this campaign was noteworthy, coming just before the opening round of Thai-U.S. Free Trade Agreement (FTA) talks, and several weeks before the International AIDS Conference, held in Bangkok, which brought thousands of government officials, activists, scientists, and journalists to Thailand.

¶4. (SBU) Rights holders acknowledge that IPR enforcement has improved slightly, and that these enforcement campaigns have shown long-term progress in some key areas. The focus on the red and yellow zones has reduced (though certainly not eliminated) retail piracy in many of those areas. Trademark brand owners and their representatives report increased cooperation with the police and other enforcement agencies; as is usually the rule, those brand owners that are most proactive in protecting their trademarks achieve the greatest results. In September, Econoff toured four local police stations with the Secretary to the Commerce Minister, Oratai Thanajaro, to evaluate progress in improving enforcement in the red and yellow areas in their jurisdiction. While two of the four police chiefs were clearly uninterested in cleaning up retail piracy (provoking an uncharacteristically heated argument between Oratai and the police), the two other police officials were able to point to measurable successes in reducing piracy in their jurisdiction. Six months after this visit, Sukhumvit Road, a major thoroughfare popular with

foreign tourists just a few blocks from the Embassy, is still largely clear of pirate retailers where before it was the home of dozens.

&Operation Eradicate:8 Major Enforcement Operations  
Initiated in Late 2004

15. (SBU) In October 2004, Royal Thai Police (RTP) Lt. Gen. Noppadol Somboonsup, currently the Deputy Police Commander for Legal Affairs, was reappointed head of IPR suppression operations. Soon after taking on this assignment, Gen. Noppadol and police enforcement teams launched &Operation Eradicate,8 an initiative directed at factories and large warehouses. He conducted a raid on a factory in the Eastern Seabord Industrial Zone, in Rayong Province, seizing one optical disk replicating line, one printing machine, one ton or polycarbonate, and 6000 pirated VCDs and CDs. In addition, the police arrested two Taiwanese nationals, two Burmese, and one Thai. At the same time, the police raided a warehouse owned by a connected company in Bangkok and seized 100,000 pirated DVD/VCD/CDs. This combined factory/warehouse raid ) the first since Gen. Noppadol ended his last tenure as IPR enforcement czar in 2002 ) netted ODs and equipment estimated at 70 million THB (almost 2 million USD). In December 2004, Gen. Noppadol and his team again raided a production facility in a province near Bangkok, seizing 100 CD-R burners, each with a capacity of burning 8000 CD-R disk per day, and 5000 pirated music CDs. Gen. Noppadol has invited Embassy officers to accompany him and his officers on future raids, and we intend to take him up on his offer. (A note on organized crime: Multinational organized crime has always been present in the vice trade in Thailand, and since IPR violations are treated less harshly than drug smuggling, it is no surprise that foreign criminal gangs appear to be involved.)

16. (SBU) Another police Special Task Force appointed by Prime Minister Thaksin, led by Col. Adul Narongsak, conducted several raids in and around Bangkok in late 2004. Two major raids on November 30 netted over 1,000,000 pirated CDs and DVDs, two replicating lines, and three printing machines. Two weeks later, these teams raided 17 spots in Bangkok, netting over 1 million pirated ODs, one replicating line, and two printing machines. A coordinated raid on the notorious pirate retailing center, Panthip Plaza, yielded no pirated goods after a complete search of the premises. (Note: This last raid underscores the unusual difficulties ) even when raids are coordinated by motivated authorities ) in shutting down piracy at Panthip.) The police and other law enforcement teams ) including teams from the border control police ) conducted further raids throughout the month. According to Department of Intellectual Property statistics, the RTG seized over 800,000 ODs in 2004, and arrested 5179 persons. The Central Investigation Division, under the leadership of Maj. General Jurumporn Suramani, has also initiated a number of anti-piracy raids on copyright infringers, earning the praise of rights holders.

17. (SBU) Disappointing to rights holders, however, is the Department of Special Investigations (DSI), which was to take over responsibility for fighting IP crime from the Economic Crimes Investigation Division (ECID) and other branches of the Royal Thai Police (RTP). Although it has been up and running for over a year, the DSI still lacks significant personnel, resources, and direction to take on this task. In addition, a recent administrative decision to divide IPR crime investigative responsibilities between the ECID and the DSI ) which gives DSI the right to investigate crimes valued upwards of 5 million THB (\$125,000) ) has created some confusion in IPR circles. Still not clear is how this amount will be valued ) street value? retail value? ) or, if even this division of labor truly exists, since DSI seems to be doing little in the way of IPR enforcement.

Tsunami Tragedy Will Put Some Enforcement Operations on Hold

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18. (SBU) The December 26, 2004 tsunami devastated large swaths of Thailand's western coastline and caused over 9000 fatalities. In the days following the tsunami, Thailand's security and police forces and government agencies focused all of their attention in assisting those in need, restoring a degree of normalcy, and launching reconstruction initiatives. In Phuket and other places hard hit by the tsunami, police are still devoted to efforts supporting

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reconstruction work, leaving few personnel able to return to IPR enforcement. Most significantly, Gen. Noppadol was tapped to oversee the multinational Thailand Tsunami Victim Identification effort, which is now striving to locate, identify and repatriate, where necessary, the thousands of victims. This immense and unprecedented ) and extremely sensitive -- task will take many months to sort out, making it unlikely that Gen. Noppadol and some of his staff will

return to IPR enforcement activities in the near term.

#### IP Court and RTP Not Working Together

¶9. (SBU) Rights holders ) and the RTP ) have both expressed concern with the search warrant application procedures of the International Trade and Intellectual Property Court (IP Court), reporting that some judges have set arbitrary guidelines and standards for the issuance of search warrants. In addition, rights holders remain unsatisfied with IP Court judgments, which they claim are too lenient and do not provide a sufficient deterrent. IP Court judges have acknowledged the problems with search warrants, and are in the process of designing guidelines for the approval of search warrant applications. Court judges have reported to Econoff that the police often do not follow proper procedures in requesting, and carrying out, search warrants (a complaint echoed by rights holders). Court judges have also said that police sometimes are not familiar enough with the cases they bring forward to answer basic questions about the warrant request, and do not report the results of the search to the Court afterwards, as required. (This last point is significant because police are often suspected to use search warrants to extort money from violators instead of executing the warrant.) No matter who is at fault, this kind of basic conflict hinders rights holders in their efforts to quickly pursue enforcement actions.

#### Legislation: OD Law Passes, but FTA Intervenes

¶10. (SBU) The RTG has moved forward to pass legislation crucial to IP protection efforts. Introduced to the Parliament in August 2003, the Optical Disk Manufacturing Law passed both houses on Parliament in October 2004. While this legislation is not as strong as many rights holders would have liked ) this draft does not provide for a licensing system for replication machines, introduce SID codes, or incorporate & sufficiently deterrent8 penalties ) it will still enhance the powers of the Department of Intellectual Property (DIP) and the RTP to monitor and enforce IPR violations. In late January 2005, a group of Senators petitioned the Constitutional Court to review a provision that allowed for the seizure of a replication machine when manufacturers fail to notify the DIP about the acquisition, transfer, or movement of a machine. These Senators were concerned that the penalties for violating an administrative provision ) making it a criminal offense subject to forfeiture of the equipment -- were too extreme. Arguing that these penalties violate constitutional rights to the use of private property, the Constitutional Court removed these provisions from the legislation. Violators of these provisions still face fines, however, and proven copyright violators will, under this law, have their machines seized. In a February 25 meeting with Econoffs, DIP DG Kanissorn Navanugraha said that this act, which he believes will bolster their enforcement powers considerably, will be signed into law within two months.

¶11. (SBU) Amendments to the Copyright Act, which have undergone several reviews by a government-led committee -- which includes an IP industry representative ) have passed the juridical council and the Cabinet. However, RTG officials have said that further revisions and legislative reviews of this Amendment will await the outcome of the ongoing FTA negotiations. The Thai Food and Drug Administration (FDA) has finished drafting implementing regulations for the Trade Secrets Act, and, in December 2004, invited stakeholder

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groups ) such as local and foreign pharmaceutical companies -- to comment on the proposed draft. Multinational pharmaceutical companies have objected to the proposed 2-year data exclusivity provisions, but FDA officials and scientists, some local pharmaceutical manufacturing companies, and many vocal NGOs oppose extending the protection period. However, the Secretary-General of the FDA, Dr. Phakdee Photsiri, has said that these provisions will also be subject to negotiation in the FTA talks. On April 28, 2004, the Geographical Indications Act came into effect, completing Thailand's adherence to TRIPS legal obligations.

#### Cable Piracy: Still a Problem

¶12. (SBU) The past year has seen very little movement towards establishing some kind of order in the cable television industry. Pirate cable operations continue to proliferate, mounting a significant challenge to U.S. content providers. One of the major hurdles in correcting this problem is the lingering controversy over the selection of the National Broadcasting Commission (NBC), which, as outlined in the Telecommunications Business Act of 2001, would regulate the cable industry. (Note: Civil society activists and industry representatives have clashed over the qualifications of the selection committee members; a similar conflict over its counterpart body, the National Telecommunications Commission, ended in late 2003.) Currently, neither the Public Relations

Department (PRD), which currently has responsibility for overseeing the cable industry, nor the DIP, which has authority over copyright matters, has been willing ) or able -- to take on this issue until the NBC is formed.

¶13. (SBU) In the meantime, Prime Minister Thaksin appointed his Deputy Secretary-General, Squadron Leader Sita Divari, to organize the various licensed and unlicensed cable providers into the Channel 11 framework that was originally proposed in November 2003. (This plan would put all cable providers under the supervision of state-owned Channel 11, which would hold and administer licenses with content providers on behalf of the providers as a stopgap measure.). Several deadlines for implementing this plan have come and gone ) the most recent was October 15 ) and it is not at all clear when or if RTG officials will take on this formidable problem.

#### The Bright Side: Thai Customs

¶14. (SBU) Rights holders and representatives report that Thai Customs has been especially proactive in seizing infringing goods at Thai ports of entry. Although no statistics are available, rights holders report that Thai Customs agents call with increasing frequency to examine suspect shipments containing a wide array of products ) brand name clothes, car parts, shoes, cell phones and parts, and other items. Rights holders note that while these interdictions have focused mostly on imports, Thai Customs has begun to inspect outgoing shipments as well, where specific information on infringing goods is available.

#### Training, Technical Assistance, and Public Education

¶15. (SBU) Over the past year, the USG has provided technical assistance and capacity building training for a number of RTG departments and agencies. In October 2004, Econoff and Legatt Adviser arranged a digital video conference between a U.S. federal judge in Hawaii and 15 judges from the IP Court to discuss sentencing options in IPR convictions. The Embassy is currently in the process of administering a \$265,000 grant from NAS directed at improving IPR enforcement in the Thai Customs Department. USG Customs and Border Protection officials have already conducted the first phase of this program ) a thorough needs assessment ) in November 2004, and will begin to implement the training, technical assistance, and capacity building elements of the plan in mid-2005. In addition, the Embassy plans to purchase an optical disk forensic testing kit for the Thai police, which will be under the supervision of Gen. Noppadol and the police forensic labs. This forensic kit was developed by the International Federation of Phonographic Industries (IFPI) in London, and works on the same principles as ballistic testing: each OD mould leaves unique errors and characteristic marks which can be used to trace the manufacturing origins of pirated ODs around the world. This technology will be extremely useful for producing evidence leading to increased factory raids. While the USG, through the Bangkok NAS office, will provide the funds (an estimated \$80,000), IFPI has agreed to set up and install this kit, and provide all necessary training. This technology has already been used successfully by the Malaysian and Hong Kong police to locate and raid factories producing pirated ODs.

¶16. (SBU) In addition to organizing two major IP Thailand exhibitions -- which serve to promote the idea of IP to investors, inventors, manufacturers and others -- DG Kanissorn plans to initiate a "No Fakes" certification campaign modeled on a similar initiative in Hong Kong. In coordination with retailers and rights holders, this campaign would promote outlets that sell only genuine items and, at the same time, build public awareness about IPR protection.

#### The Panthip Plaza Accords

¶17. (SBU) The owner of the notorious Panthip Plaza, the Sirivadhanabhakdi Group (SG) is also the owner of a number of high-end hotels in Thailand often used by US Embassy personnel and agencies for TDY visits and events. In February 2003, Panthip Plaza's resilience as the center of pirate retailing in Bangkok led the Embassy to take the unusual step of initiating a commercial boycott of these hotels for all official purposes. In the following months, Econoffs used this leverage to engage with SG and the Panthip management on reducing infringement at their property, with few results. The Panthip management claimed that they inherited several dozen tenants with 30-year leases from the previous owners, preventing them from ejecting shopowners selling pirated products. In November 2004, the new management of one of SG's premier hotels, the Plaza Athenee, sought to end this impasse and compete again for US Embassy business at their property. At the suggestion of the Embassy, the management offered to install closed circuit security cameras throughout the property in order to discourage overt illegal activity and to provide rights holders with concrete evidence to be used in law enforcement actions. As a result of this offer, and with the cooperation of SG and the Panthip management,

the Embassy agreed to rescind the boycott. We expect the cameras to be operational by March 2005. While we don't see the cameras as a panacea, they are a modest step forward in that they serve as a deterrent -- some customers will think twice about being recorded on film performing an illegal act, so transactions will have to be done surreptitiously, e.g., in bathrooms, making pirated DVD sales more akin to drug deals. The hope is that, given these conditions, many potential customers will choose to stay away.

Comment

¶18. (SBU) Comment: Despite the ups and downs throughout the year, overall, IP enforcement is somewhat better now than it was a year ago. The RTG's efforts to target enforcement actions on the most visible and profitable pirate retailing centers have largely reduced the most egregious markets for pirated and counterfeited goods. Enforcement actions in the last few months of 2004 have yielded impressive numbers of infringing goods and replicating machinery. Similarly, on the legislative side, the OD manufacturing bill will soon become law. While weaker than the IP industry wants, it is still the most effective tool the RTG has at its disposal to address OD infringement. In addition, FTA negotiations are soon to be our best forum to take up USG concerns over the Trade Secrets Act regulations and the Copyright Amendment; we believe the RTG can make concessions in the FTA context that would be otherwise difficult. The IIPA 2005 Special 301 Report for Thailand is accurate in many of its details, and provides an excellent inventory of the problems rights holders face here. However, the evidence, as evinced in the IIPA report and elsewhere, does not in our view support the call to upgrade Thailand to the Priority Watch List. All local rights holders agree that IPR protection has improved in one way or the other, and in no area has the situation deteriorated from where it was this time last year. We are also mindful of the fact that significant IPR protection resources have been diverted to urgent tsunami recovery efforts, something we are reluctant to criticize, even implicitly. In view of these considerations, Embassy recommends that Thailand be kept on the Watch List.

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